

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DANIEL GARCIA	§	
v.	§	CIVIL ACTION NO. 9:11cv126
DIRECTOR, TDCJ	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Daniel Garcia, an inmate of the Texas Department of Criminal Justice, Correctional Institutions Division, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Garcia was convicted of possession of a controlled substance in a penal institution on October 16, 2009, receiving a sentence of four years in prison. He did not take a direct appeal, but filed a state habeas corpus application on July 7, 2010. This application was denied on September 22, 2010. Garcia then filed his federal habeas corpus petition on July 25, 2011.

The Respondent was ordered to answer the petition and filed a motion to dismiss the lawsuit based upon the expiration of the statute of limitations. Garcia did not file a response to the motion to dismiss.

On March 7, 2012, the Magistrate Judge issued a Report recommending that the motion to dismiss be granted and that the petition be dismissed. The Magistrate Judge calculated that the statute of limitations, as tolled by Garcia's state habeas petition, expired on February 2, 2011. Because Garcia did not seek federal habeas relief until July 25, 2011, over five months after the

limitations period had expired, the Magistrate Judge concluded that the petition was barred by the statute of limitations.

Garcia filed objections to the Magistrate Judge's Report on March 19, 2012. In his objections, Garcia recounts the facts of his case, says that he did not want to fight it because he doubted the competency of his "TDCJ lawyer" who told him that he had no chance to beat the case, states that the judge told him that "if he had some money he could try to buy some justice," complains about the prison grievance procedures, discusses political and economic theories, and asserts that TDCJ hires "killers and rapists" as guards, meaning that the lack of safety at the prison is in part due to some of the officers. He only briefly alludes to the statute of limitations, stating that he "cannot cite cases or find rules that will excuse his untimeliness."

The Magistrate Judge's time calculations are correct. Garcia has shown no reason why his petition should not be barred by the statute of limitations, nor any basis upon which this limitations period should be legally or equitably tolled. His objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, the Report of the Magistrate Judge, and the Petitioner's objections thereto. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and the Report of the Magistrate Judge (docket no. 13) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Daniel Garcia is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **26** day of **April, 2012**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge